

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

50893

FILE: B-181574

DATE: July 11, 1975

MATTER OF: Hudson Automatic Machine & Tool Co.

97391

## DIGEST:

1. Allegations that contracting activity should have advertised for specific numbers of machines rather than permitting offerors to determine numbers and that offerors were not competing on equal basis due to 70- to 100-percent completion rate allowed are untimely, as time to have protested such issues was prior to deadline for submission of proposals.
2. Where award was made to offeror who offered sufficient number of machines to accomplish work at lowest cost no objection may be raised. Fact that protester offered six more machines at cost of approximately one machine is irrelevant as protester's machines accomplished no more work than awardee's smaller number of machines.
3. Where contracting activity must compare offers as submitted, such precludes incorporating technical information from one offeror's proposal into another proposal and providing one offeror with technical information from another's offer is contrary to ASPR § 3-507.2.
4. Allegation that possible changes will be made in requirements and specifications in future so as to affect machines, even if assumed to be true, does not show that method of evaluation applied was invalid or that result under any changed evaluation method would have been different than result reached here.

Request for proposals No. DAAA25-74-R-0468 was issued by the United States Army Frankford Arsenal for the procurement of precision high-speed automatic lathes. Rather than specifying the precise numbers of lathes to be procured, the solicitation permitted each offeror to determine how many of its machines would be required to accomplish the production requirements set forth for each item and to submit an offer accordingly.

Section D-11 of the Evaluation and Award Factors stated that:

"a. Award will be made to the responsible offeror whose bid is most advantageous to the government, price \* \* \* and other factors considered. The other factors are Machine Capability and Productivity.

"b. Of these other factors, Machine Capability is the most important. Price is approximately equal in importance to the total of the two other factors.

\* \* \* \* \*

"d. After evaluation of factors b(1) and (2) [Machine Capability and Productivity, respectively] and a determination of proposals deemed acceptable on all factors, a determination will be made that either the highest overall rating is (1) significantly superior to all others or (2) is essentially equal to one or more of the others. If two or more highest rated bidders are essentially equal, award will be made to the one who proposes the lowest cost. If one bidder's rating is significantly superior to all others and his cost is higher than other acceptable bids, the government will determine whether this superiority is sufficient to justify the difference in cost. This determination will identify the bid most advantageous to the government. If the significantly superior rated bidder also proposes the lowest cost, he will receive the award."

After receipt of best and final offers on June 18, 1974, it was determined that, in accordance with the above-quoted evaluation criteria, award should be made to the American Bechler Corporation (Bechler). It is this award, made on January 3, 1975, that the Hudson Automatic Machine & Tool Co. (Hudson) contests.

Evaluation of the proposals initially submitted on June 10 showed Hudson to have submitted the lowest priced of those found technically acceptable. Hudson offered 37 machines at a total cost of \$953,416. Bechler in its initial proposal offered 37 machines at a total cost of \$1,116,654. Hudson did not change its offer in response to the request for best and final offers. Bechler, by

making various changes on its machines to increase production rates, was able to decrease the number of machines offered by six to 31 and to lower its offered price to \$933,143.

During the course of the evaluation of the proposals, each offer received a productivity and a capability rating. The productivity rating was determined by calculating the net production rate over a 3-hour period for a given fuze part. The highest production rate offered was then used as a base, and the other offerors' rates were then figured as a percentage of that base. After all productivity percentages had been calculated, each offeror's scores were multiplied by a weight factor of eight. The weighted scores of each offeror were then added together, and a weighted average was computed by dividing the total score by 40 (5 x 8). The scoring for capability was calculated in a similar manner. In accordance with the solicitation, capability was weighted more heavily than productivity. All capability scores were identical as the machine of each offeror was capable of doing 100 percent of each part in one cycle. Bechler received the highest technical rating with a score of 111. The second high rating, a score of 103.4, was received by another offeror. Hudson received a score of 100. Because Bechler received the highest technical rating and because its price was also the lowest, it was determined that Bechler should receive the award in view of the evaluation provision stating that "If the significantly superior bidder also proposes the lowest cost, he will receive the award."

The Hudson protest against the award to Bechler is based essentially upon two premises. First, it is Hudson's belief that the solicitation was defective in that it left the number of machines offered solely up to the discretion of each offeror. It is contended that the contracting activity should have instead solicited for specific numbers of machines. Secondly, Hudson contends that the most advantageous offer that the Government received was that from its firm and that, consequently, Hudson should have received the award. In this respect, it is asserted by Hudson that the machine offered by Bechler and that offered by Hudson are virtually identical, except that the Hudson machine is lower in price. Both machines can perform 100 percent of the operation in one complete cycle. Since the contracting activity's evaluation did not result in identical scoring for each machine, it is believed by Hudson that the activity either failed to take into account two factors which would of necessity have been introduced into the Bechler machine by an improved productivity rate, namely

the sacrifice of some efficiency or the change in the percentage of the operation that will be completed in one cycle, or that the production requirements of the activity cannot be met with the number of machines offered by Bechler. Conversely, it is contended that, since both machines are virtually identical, if the number of machines Bechler offered is correct then the same number of Hudson machines will do the job, thereby leaving the Government with six extra machines for approximately the price of one. In this respect, it is felt that, since the machines are allegedly for storage and since contracts have been awarded to study changing the production methods and the specifications for the fuzes, a failure to make an award leading to the acquisition of six additional machines is highly short-sighted. Also, a question is raised as to whether offerors may be said to be competing on equal items where the permissible completion rate may range from 70 to 100 percent. Finally, it is contended by Hudson that in view of the reduced number of machines offered by Bechler, the contracting activity should have reopened negotiations with Hudson and Bechler so as to determine which number of machines was actually the correct number necessary for performing the required work. Hudson observes in this regard that the fact it might have benefited from gaining access to information showing how Bechler intended to increase the productivity of its machines is irrelevant since this would have only benefited the Government (i.e., the end result would have been a lower priced submission by Hudson). It is also felt that proper negotiations could not have been conducted without this action on the part of the contracting activity.

It has been noted in the report furnished our Office by the contracting agency that that portion of the Hudson protest regarding its contention that the activity should have specified definite numbers of machines rather than leaving the numbers to the discretion of each offeror is untimely raised. We agree. The Interim Bid Protest Procedures and Standards of our Office provide at 4 C.F.R. § 20.2(a) (1974) that:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to \* \* \* the closing date for receipt of proposals shall be filed prior to \* \* \* the closing date for receipt of proposals. \* \* \*"

The fact that specified numbers of these machines were not being procured was obvious prior to the closing date, and yet this matter

was not protested until after award. The contention that offerors were not competing on equal items in view of the 70- to 100-percent requirement is also an issue which could and should have been raised prior to the submission deadline. Consequently, we must view both these issues as being untimely raised and, therefore, not for consideration. Daconics, B-182309, May 19, 1975. While it is noted that Hudson did protest the change in specification to the contracting activity in late 1973 and early 1974, the activity disregarded the protest and, in effect, denied it by issuing the solicitation now being protested slightly less than 1 year later. Under 4 C.F.R. § 20.2(a), supra, it was incumbent to file a protest with our Office within 5 working days after such adverse agency action.

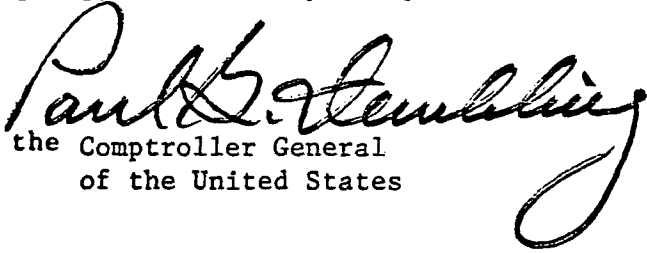
Next we turn to the issue of whether the award was correctly made to Bechler and whether the award was the one that would be most advantageous to the Government. The procurement was for an amount of machinery that would accomplish a specified amount of work. It contemplated the comparison of each offer exactly as submitted and an evaluation of each vis-a-vis any other received. Bechler submitted an offer to provide a certain amount of machinery, and this amount was determined sufficient to do the job. Hudson submitted a larger amount of machinery at a higher price, which amount was also sufficient to accomplish the job. Assuming that the Government's technical team was correct in not questioning the capability of either offeror's machine, it does not appear reasonable to accept Hudson's argument that by accepting Hudson's offer the Government would receive six extra machines. If the amounts of machines offered by Bechler and Hudson will both do the same amount of work, the accomplishment of which is important and not whether one offer provides more machines, then it cannot be said that having six more machines is advantageous to the Government. Those six machines do not accomplish work above and beyond the work that must be accomplished. Bechler's best and final offer to the activity stated the reasons for its ability to increase the productivity of its machines and, therefore, to reduce the number offered. These reasons were elimination of double turning and deburring, use of carbide drills at higher drilling speeds, and increased feed rates. We note in this context that amendment No. 1 to the solicitation stated that burrs resulting from normal machining operations would be permissible. We also note that Hudson does not specifically contest the activity's determination that the above-mentioned changes would permit the increased productivity rates. Hudson's concern over Bechler's ability to perform with the number of machines offered questions Bechler's responsibility, the determination of which is not subject to review by our Office in the absence of fraud. Atlantic Maintenance Co., B-181519, February 24, 1975.

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Concerning Hudson's assertions that negotiations should have been reopened, such an action is prohibited under paragraph 3-507.2 of the Armed Services Procurement Regulation (1974 ed.) While it may be true the Government could have received a lower priced proposal, the maintenance of the procurement system outweighs any such monetary savings.

As regards the Hudson contention that contracts are being performed to study the feasibility of changing the requirements and specifications as to favor acceptance of a greater number of machines, we do not believe this contention proven. Even should such changes be made, this fact does not prove per se that the evaluation method adopted and applied here was unreasonable. Nor do we believe, assuming other tests for evaluation had been used in view of imminent changes, that the allegation precludes, in any case, Bechler from submitting higher production rates, thereby allowing it to offer fewer machines.

In view of the foregoing, we must deny the protest.

  
For the Comptroller General  
of the United States